



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,759	06/15/2001	Paul McAlinden	ITL.0600US (P11741)	9776
21906 7590 10/19/2007 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER DANIEL JR, WILLIE J	
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			10/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/882,759

Applicant(s)

MCALINDEN, PAUL

Examiner

Willie J. Daniel, Jr.

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-9,11,12,34,36 and 38-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-9,11,12,34,36 and 38-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment filed on 14 August 2007. **Claims 1-2, 4, 6-9, 11-12, 34, 36, and 38-46** are now pending in the present application **claims 3, 5, 10, 13-33, 35, and 37** have been canceled. This office action is made **Final**.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

- a. Claim 1 recites the limitations "...**control unit** to execute the configuration application to **determine** whether **configuration** of the **portable device** is **desired**...based upon **detection of a problem** with the portable device **by the base station**..." in line(s) 5-8 of the claim.
- b. Claim 8 recites the limitations "...diagnosing a malfunction of a portable device with a **base station**; **determining** in the portable device **itself** if configuration of the portable device is desired based on diagnosing the malfunction..." in line(s) 2-4 of the claim.

Regarding **claims 1 and 8**, the claim(s) include(s) a limitation(s) that is not supported by the specification of the instant application as originally filed. The applicant on pg. 6, 1st paragraph of remarks section states, "...amendments to claims may be found...Figs. 3 and 4..." as a cited area of support for the newly amended claimed limitation(s). Upon reviewing the cited area and full description, the cited area does not support or convey the newly amended claim limitation(s) as indicated in items 3a and 3b above. The applicant is advised to review the subject matter of the specification (see pg. 7, lines 7-11; abstract), which at best describes that the **portable device itself detects or determines a problem** as one embodiment for (i.e., in other words there is no language of a base station). Also, the specification (see pg. 7, lines 15-17) recites "...in yet another embodiment, the **base station 15 may detect a problem...**" which is clearly another embodiment. Consequently, the specification describes for step 420 at least **two separate embodiments** that function separately and does not support the combined limitations of the current claim language. Therefore, either the portable device detects a problem or the base station detects the problem. Applicant is advised to clearly and concisely provide claim language that is consistent and correlates to the specification and mindful not to improperly claim limitations that are clearly not supported. In addition, the limitation "...base station..." was not provided in the claims as originally filed. The Examiner respectfully requests the applicant to provide page(s), line(s), and figure(s) of the instant application that supports the limitation of the claim(s) and/or any supportive comment(s) to help clarify and resolve this issue(s).

In response to applicant's comments on pg. 6, 1st paragraph, "...support...specification...page, 7, lines 6-9 and 15-17...", the Examiner respectfully

Art Unit: 2617

disagrees. The area cited as support speaks of multiple embodiments separately used. For example, instant application pg. 7, lines 6-9 merely describes the portable device determines if configuration is desired. Another example, instant application pg. 7, lines 15-17 basically describes the base station detecting a problem with the portable device and the base station determining that configuration is desired. Therefore, in view of the above, the 112 rejection is hereby maintained.

3. Due to the new matter claim language provided in the response filed on 27 February 2007 as opposed to the language of the instant application as originally filed, the Examiner has given a reasonable interpretation of said language and the claims are rejected as broadest and best interpreted.
4. This list of examples is not intended to be exhaustive. The Examiner respectfully requests the applicant to review all claims and clarify the issues as listed above as well as any other issue(s) that are not listed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4, 6, 41-42, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Webster et al.** (hereinafter Webster) (**US 6,449,493 B1**), **Kirkpatrick** (**US 5,933,776**), and **Imamatsu** (**US 6,687,901 B1**).

Regarding **claim 1**, Fette discloses a software programmable radio (200) which hereinafter reads on the claimed “portable device” (see col. 4, lines 54-67; Figs. 1 and 2), comprising:

a memory (206) which hereinafter reads on the claimed “storage unit” having a first portion and second portion (see col. 4, lines 55-56; col. 5, lines 33-49, 55-57; col. 6, line 21-23, 62-65; Fig. 2 “ref. 206”), where the memory has separate portions for storing information, for example, the storage unit (206) has separate portions as shown in Fig. 2 “206”;

a configuration application stored in the second portion (see col. 3, lines 52-57; col. 5, lines 11-13, 18-22, 33-49, 55-57; col. 6, line 21-23, 62-65; Fig. 2 “ref. 206”); and

a controller (204) which hereinafter reads the claimed “control unit” communicatively coupled to the storage unit (206) (see Fig. 2),

in response to an indication received from a base station (106) (see col. 4, lines 34-36; Fig. 1), where radio receives the updates via the base station (106) in which an indication

Art Unit: 2617

would be inherent as evidenced by the fact that one of ordinary skill in the art would clearly recognize,

based upon detection of a problem (200) with the portable device (see col. 8, line 54-57; col. 8, line 64 - col. 9, line 19; Figs. 3 “ref. 314, 320”, 4 “ref. 322, 324”), where the controller (204) of the radio (200) tests the software by checking for problems,

request configuration information in response to verifying that configuration is desired by a user of the portable device (see col. 3, lines 31-34, col. 4, lines 25-34; col. 7, lines 42-48; Fig. 3),

establish a connection with a software distribution computer (SDC) (114) which hereinafter reads on the claimed “remote device” coupled to the base station (106) (see col. 3, lines 24-30; Fig. 1), and

receive the requested configuration information (see col. 4, lines 34-36), where the mobile radio receives the requested software updates; and

store the requested configuration information in the first portion of the storage unit (206) (see col. 5, lines 33-48, 55-57; col. 4, lines 27-35; Figs. 2 “ref. 206”, 3, and 4), where the controller stores the information (e.g., software programs, configuration/reconfiguration files, waveforms, licenses) in portions of the storage unit. As a note, Fette discloses the SDC (114) and server (110) recognizes which software updates the radio (200) needs (see col. 4, lines 27-35). Fette does not specifically disclose having the features the second portion comprising a protected region; the control unit to execute the configuration application to determine whether configuration of the portable device is desired based upon detection of a

problem by a base station. However, the examiner maintains that the features the second portion comprising a protected region was well known in the art, as taught by Webster.

In the same field of endeavor, Webster discloses the feature the second portion comprising a protected region (see col. 3, lines 12-15,44-50; col. 5, lines 46-54; Fig. 1 "ref. 32"), where the regions of the memory uses, for example, dealer programs or passwords to protect against alterations.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Webster to have the feature the second portion comprising a protected region, in order to make operation of the portable or mobile radio simple, as taught by Webster (see col. 1, lines 38-42). The combination of Fette and Webster does not specifically disclose having the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station. However, the examiner maintains that the feature based upon detection of a problem with the portable device by the base station was well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature based upon detection of a problem with the portable device (e.g., cellular telephone) by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Kirkpatrick to have the feature based upon detection of a problem with the portable device by the base station, in

Art Unit: 2617

order to provide a method and apparatus by a cellular telephone is tested in-service in the field, as taught by Kirkpatrick (see col. 1, lines 64-68). The combination of Fette, Webster, and Kirkpatrick does not specifically disclose having the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station. However, the examiner maintains that the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station was well known in the art, as taught by Imamatsu.

In the same field of endeavor, Imamatsu discloses the feature the CPU (22) which reads on the claimed "control unit" to execute the configuration application to determine whether configuration of the mobile terminal device (10) which reads on the claimed "portable device" is desired in response to an indication received from a base station (103) based upon detection of a problem with the portable device by the base station (103) (see col. 4, lines 10-17, 43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50) via the base station (103) determines the mobile device (10) does not have the latest software version in which where the software supply device determines whether an update is necessary and transmits the software via the base station (103) to the mobile terminal (10) for an upgrade (see col. 4, lines 21-25; col. 9, lines 6-12, 40-48, 52-56; col. 8, lines 1-8, 19-22; Figs. 2-3 and 7-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and Imamatsu to have the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Regarding **claim 2**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable (200) device of claim 1, wherein the control unit (204) to further initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **claim 4**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to establish a communication link (105) with the software distribution computer (SDC) (114) which hereinafter reads on the claimed "remote device" to receive the configuration information (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC.

Regarding **claim 6**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further

Art Unit: 2617

discloses the portable device (200) of claim 1, wherein the control unit (204) to receive at least one of an operating system, protocol stack layer, and application layer of the portable device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives information for the operating software, communication protocol, or an application.

Regarding **claim 41**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 4), in addition Fette further discloses the portable device of claim 4, wherein the control unit (204) is to provide a radio ID which reads on the claimed “unique electronic identifier” to the remote device (114) (see col. 8, lines 3-14), where a unique radio ID is associated with the portable device for identification of licenses and software.

Regarding **claim 42**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 41), in addition Fette further discloses the portable device of claim 41, wherein the requested configuration information is associated with the unique electronic identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID.

Regarding **claim 45**, the combination of Fette Webster, and Kirkpatrick discloses every limitation claimed as applied above in claim 1. The combination of Fette and Webster does not specifically disclose having the feature wherein the control unit to further prompt a user to couple the portable device to a battery charger prior to the request for the configuration information. However, the examiner maintains that the feature wherein the

Art Unit: 2617

control unit to further prompt a user to couple the portable device to a battery charger prior to the request for the configuration information was well known in the art, as taught by Imamatsu.

Imamatsu further discloses the feature wherein the control unit (22) to further prompt a user to couple the portable device to a battery charger prior to the request for the configuration information (see col. 9, lines 12-30; Figs. 2-3 and 7-8), where the update is performed according to the condition of the battery such as the mobile device (10) connected to a charger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and Imamatsu to have the feature wherein the control unit to further prompt a user to couple the portable device to a battery charger prior to the request for the configuration information, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Claims 7, 34, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Webster et al.** (hereinafter Webster) (US 6,449,493 B1), **Kirkpatrick** (US 5,933,776), and **Imamatsu** (US 6,687,901 B1) as applied to claim 1 above, and further in view of **Criss et al.** (hereinafter Criss) (US 6,735,434 B2).

Regarding **claim 7**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses the limitations claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) is to determine

(see col. 8, lines 21-37; col. 9, lines 15-19; Figs. 3 “314” and 4 “322”), where the controller determines if the software upgrade is complete and correct. The combination of Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature determine whether restoration of the portable device to a prior operational state is desired; and further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state. However, the examiner maintains that the feature determine whether restoration of the portable device to a prior operational state is desired; and further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature determine whether restoration of the portable device to a prior operational state is desired (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version; and

further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version thereby allowing the portable terminal to rollback or revert to the old version.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu, and Criss to have the feature determine whether restoration of the portable device to a prior

operational state is desired; and further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 34**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses of the portable device of claim 1, wherein the control unit (204) to further visually verify with a user that the configuration is desired (see col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can accept or deny the software for configuring the radio in which the visually would be inherent via a display(214) as evidenced by the fact that one of ordinary skill in the art would clearly recognize. The combination of Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature prior to the request for the configuration information. However, the examiner maintains that the feature prior to the request for the configuration information was well known in the art, as taught by Criss.

Criss further discloses the feature prior to the request for the configuration information (see col. 17, lines 19-45; Fig. 11), where the user of the mobile terminal (36) selects software packages which requests the available software.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu, and Criss to have the feature prior to the request for the configuration information, in order to

Art Unit: 2617

have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 44**, the combination of Fette and Webster discloses every limitation claimed as applied above in claim 1. The combination of Fette and Webster does not specifically disclose having the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of a problem by a base station in response to a booting of the portable device. However, the examiner maintains that the feature configuration of the portable device is desired based upon detection of a problem by the base station was well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature configuration of the portable device (e.g., cellular telephone) is desired based upon detection of a problem by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Kirkpatrick to have the feature configuration of the portable device is desired based upon detection of a problem by the base station, in order to provide a method and apparatus by a cellular telephone is tested in-service in the field, as taught by Kirkpatrick (see col. 1, lines 64-68). The combination of Fette and Webster does not specifically disclose having the feature the control unit to execute the configuration application to determine whether configuration of

Art Unit: 2617

the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station. However, the examiner maintains that the feature based upon detection of a problem with the portable device by the base station was well known in the art, as taught by Kirkpatrick. The combination of Fette, Webster, and Kirkpatrick does not specifically disclose having the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of a problem by the base station in response to a booting of the portable device. However, the examiner maintains that the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of the problem by the base station was well known in the art, as taught by Imamatsu.

Imamatsu discloses the feature wherein the CPU (22) which reads on the claimed "control unit" to execute the configuration application to verify that configuration of the mobile terminal device (10) which reads on the claimed "portable device" is desired based upon detection of the problem by the base station (103) (see col. 4, lines 10-17, 43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50) via the base station (103) determines mobile device (10) does not have the latest software version.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and Imamatsu to have the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection

Art Unit: 2617

of the problem by the base station, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14). The combination of Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature in response to a booting of the portable device. However, the examiner maintains that the feature in response to a booting of the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature in response to booting the portable device (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the mobile terminal goes through a boot-up routing or initialization in which the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu, and Criss to have the feature in response to booting the portable device, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Claims 8-9, 11-12, 36, 38-39, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Kirkpatrick** (US 5,933,776), **Moles et al.** (hereinafter Moles) (US 2002/0072359 A1), and **Criss et al.** (hereinafter Criss) (US 6,735,434 B2).

Regarding **claim 8**, Fette discloses a method, comprising:

Art Unit: 2617

diagnosing a malfunction of a portable device (200) (see col. 8, lines 29-38; col. 9, lines 11-20; col. 7, lines 18-25, 42-49; col. 4, lines 27-35; Fig. 3 “ref. 303, 316, 324”), where the radio (200) fails to support an operation;

determining in the portable device if configuration of the portable device (200) is desired based on the determination diagnosing a malfunction (see col. 2, lines 34-45; col. 3, lines 31-41; col. 4, lines 25-36; col. 5, lines 18-21; col. 7, 42-49; Fig. 3), where the radio controller determines if new or updated information is available and request the information for configuring of the radio in which the software is received based upon the user request;

executing one or more instructions on the portable device (200) to receive configuration information in response to determining that configuration of the portable device (200) is desired by establishing a wireless connection with a remote device (114) coupled to the base station (106) (see col. 3, lines 24-41; col. 4, lines 25-44; 54-67; col. 7, lines 42-48; Figs. 1, 2, and 3), where the controller determines the need for new or updated software and request and receive the software,

transmitting a radio ID which hereinafter reads on the claimed “unique identifier” associated with the portable device (200) (see col. 8, lines 3-14), where a unique radio ID is associated with the portable device for identification of licenses and software, and

receiving configuration information from the remote device (114) associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID,

storing the received configuration information in the portable device (200) (see col. 5, lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software programs, waveforms, licenses) in the storage unit. As a note, Fette discloses the SDC (114) and server (110) recognizes which software updates the radio (200) needs (see col. 4, lines 27-35). Also, Fette further teaches the feature reconfiguring the portable device (200) to the prior operational state (see col. 9, lines 14-20,50-51; Fig. 4 “ref. 324, 334, 336”), where the return of the radio to a previous operable state would be inherent when test for the update information (software) is unusable or when the user does not accept to software. Fette does not specifically disclose having the features diagnosing a malfunction of a portable device with a base station; determining in the portable device itself if configuration of the portable device is desired based on diagnosing the malfunction; the configuration information comprising reconfiguration information associated with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state. However, the examiner maintains that the feature diagnosing a malfunction of the portable device with a base station was well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature diagnosing a malfunction of the portable device (e.g., cellular telephone) with a base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kirkpatrick to have the feature diagnosing a malfunction of the portable device with a base station, in order to provide a method and apparatus by a cellular telephone is tested in-service in the field, as taught by

Kirkpatrick (see col. 1, lines 64-68). The combination of Fette and Kirkpatrick does not specifically disclose the feature determining in the portable device itself if configuration of the portable device is desired based on the diagnosing the malfunction; the configuration information comprising reconfiguration information associated with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state. However, the examiner maintains that the feature determining in the portable device itself if configuration of the portable device is desired based on the diagnosing the malfunction was well known in the art, as taught by Moles.

In the same field of endeavor, Moles discloses the feature determining in the portable device itself if configuration of the mobile station (112) which reads on the claimed “portable device” is desired based on diagnosing the malfunction (see pg. 5, ¶ [0066], lines 13-16; pg. 6, ¶ [0068]; Fig. 5 “ref. 505”), where the MS (112) performs a diagnostic test and detects an internal fault. As a note, Moles also further supports diagnosing a malfunction of a portable device with a base station (101) (see pg. 4-5, ¶ [0055-0057]; Fig. 3), where the system has the MS (112) communicate with the OTAMD server (160) via base station (101).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, and Moles to have the feature determining in the portable device itself if configuration of the portable device is desired based on diagnosing the malfunction, in order to perform diagnostic operations on wireless handsets and other types of mobile stations, as taught by Moles (see pg. 2, ¶ [0017]). The combination of Fette, Kirkpatrick, and Moles does not specifically disclose having the features the configuration information comprising reconfiguration information associated

with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state using reconfiguration information. However, the examiner maintains that the features the configuration information comprising reconfiguration information associated with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state using reconfiguration information was well known in the art, as taught by Criss.

Criss further discloses the features the configuration information comprising reconfiguration information associated with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state using reconfiguration information (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version thereby allowing the portable terminal to rollback or revert to the old version in which the portable device is reconfigured to a previous operable state.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to have the features the configuration information comprising reconfiguration information associated with the portable device in a previous operational state; and reconfiguring the portable to the prior operational state using reconfiguration information, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 9**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses

Art Unit: 2617

the method of claim 8, further comprising initializing the portable device (200) with at least a portion of the received configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **claim 11**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, wherein determining if configuration is desired comprises detecting an indication to reconfigure the portable device (see col. 2, lines 34-45; col. 4, lines 25-36; col. 7, lines 42-49), where the availability of new or updated software will indicate that the portable device will be reconfigured in accordance to the latest software.

Regarding **claim 12**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, wherein storing the received configuration information comprises storing at least one of an operating system, protocol stack, and application layer of the portable device (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines 24-65; Figs. 3 and 4), where the portable device receives and stores information for the operating software, communication protocol, or an application in the memory.

Regarding **claim 36**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses the method of claim 8, further comprising visually prompting a user to verify that the configuration is desired (see col. 3, lines 31-50; col. 4, lines 30-35; col. 5, lines 21-23; col. 7, lines 41-49; Fig. 4 “ref. 334”), where the user can request new or updated software

Art Unit: 2617

and accept or deny the software for configuring the radio in which the visually prompting would be inherent via a display(214) as evidenced by the fact that one of ordinary skill in the art would clearly recognize.

Regarding **claim 38**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 11), in addition Fette further discloses the method of claim 37, further comprising reconfiguring the portable device (200) after an unsuccessful upgrade attempt (see col. 8, lines 24-31; col. 9, lines 14-20; Figs. 3 and 4 “ref. 322, 334, 336”), where the radio is unable to generate the operation of the information (waveform) that has been received in which the reconfiguring would be inherent as evidenced by the fact that one of ordinary skill in the art would clearly recognize.

Regarding **claim 39**, the combination of Fette, Kirkpatrick, and Moles discloses every limitation claimed, as applied above (see claim 8), in addition Fette further discloses regarding the malfunction (see col. 8, lines 29-38; col. 9, lines 11-20; Fig. 3 “ref. 316, 324”), where the radio fails to support an operation. Also, Kirkpatrick discloses the base station detecting a fault (see col. 5, lines 1-7). The combination of Fette, Kirkpatrick, and Moles does not specifically disclose having the feature generating and transmitting an indication to the portable device from the base station regarding the malfunction. However, the examiner maintains that the feature generating and transmitting an indication to the portable device from the base station regarding the malfunction was well known in the art, as taught by Criss.

Criss further discloses the feature by a base station (28) and generating and transmitting an indication to the portable device (36) (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the host computer detects that the mobile terminal is using an older

version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to have the feature generating and transmitting an indication to the portable device from the base station regarding the malfunction, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 43**, the combination of Fette, Kirkpatrick, and Moles discloses every limitation claimed as applied above in claim 8. Fette does not specifically disclose having the feature including diagnosing the malfunction in response to booting the portable device. However, the examiner maintains that the feature including diagnosing the malfunction in response to booting the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature including diagnosing the malfunction in response to booting the portable device (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the mobile terminal goes through a boot-up routing or initialization in which the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to have the feature including diagnosing the malfunction in response to booting the portable device, in order to have software upgrades that are wirelessly transmitted to a mobile device

Art Unit: 2617

based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kirkpatrick** (**US 5,933,776**), **Moles et al.** (hereinafter Moles) (**US 2002/0072359 A1**), and **Criss et al.** (hereinafter Criss) (**US 6,735,434 B2**) as applied to claim 39 above, and further in view of **Sharma et al.** (hereinafter Sharma) (**US 6,766,165 B2**).

Regarding **claim 40**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed, as applied above (see claim 39), in addition Fette further discloses establishing a connection (105) between the base station (106) and the portable device (200) (see Fig. 1). The combination of Fette, Moles, and Criss does not specifically disclose having the feature secure connection. However, the examiner maintains that the feature secure connection was well known in the art, as taught by Sharma.

In the same field of endeavor, Sharma discloses the feature secure channel which reads on the claimed "connection" (see col. 4, lines 38-43; col. 5, lines 1-7; abstract; Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, Criss, and Sharma to have the feature secure connection, in order to have flexibility and mobility of a network manager such as an administrator or a technician to manage and troubleshoot problems on a network, as taught by Sharma (see col. 3, lines 10-13; col. 4, lines 34-38).

Art Unit: 2617

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kirkpatrick** (**US 5,933,776**), **Moles et al.** (hereinafter Moles) (**US 2002/0072359 A1**), and **Criss et al.** (hereinafter Criss) (**US 6,735,434 B2**) as applied to claim 8 above, and further in view of **Imamatsu** (**US 6,687,901 B1**).

Regarding **claim 46**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed as applied above in claim 8. The combination of Fette, Kirkpatrick, Moles, and Criss does not specifically disclose having the feature further comprising prompting a user to couple the portable device to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information. However, the examiner maintains that the feature further comprising prompting a user to couple the portable device to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information was well known in the art, as taught by Imamatsu.

Imamatsu further discloses the feature further comprising prompting a user to couple the portable device (10) to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information (see col. 9, lines 12-30; Figs. 2-3 and 7-8), where the update is performed according to the condition of the battery such as the mobile device (10) connected to a charger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, Criss, and Imamatsu to have the feature further comprising prompting a user to couple the portable device to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Response to Arguments

6. Applicant's arguments filed 14 August 2007 have been fully considered but they are not persuasive.

The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the above claims and comments in this section).

7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 1 on pg. 6, 2nd paragraph, "...does not meet the substance of the claims...", the Examiner respectfully disagrees. Applicant has failed to appreciate the combined teachings of well-known prior art Fette, Webster, Kirkpatrick, and Imamatsu that clearly discloses the claimed feature(s) as would be clearly recognized by one of ordinary skill in the art. In particular, Kirkpatrick discloses the feature(s) further discloses the feature based upon detection of a problem with the portable device (e.g., cellular telephone) by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determine faults of a cellular telephone. As further support in the same field of endeavor, Imamatsu discloses the feature(s) the CPU (22) which reads on the claimed "control unit" to execute the configuration application to determine whether configuration of the mobile terminal device (10) which reads on the claimed "portable device" is desired in response to an indication received from a base station (103) based upon detection of a

Art Unit: 2617

problem with the portable device by the base station (103) (see col. 4, lines 10-17,43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50) via the base station (103) determines the mobile device (10) does not have the latest software version in which where the software supply device determines whether an update is necessary and transmits the software via the base station (103) to the mobile terminal (10) for an upgrade (see col. 4, lines 21-25; col. 9, lines 6-12,40-48,52-56; col. 8, lines 1-8,19-22; Figs. 2-3 and 7-8). Therefore, the combination(s) of the reference(s) Fette, Webster, Kirkpatrick, and Imamatsu as addressed above more than adequately meets the claim limitations.

8. Regarding applicant's argument(s) of claim(s) 8, the claim is addressed for the same reasons as set forth above and as applied above in each claim rejection.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2617

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-7907. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WJD,JR/

WJD,JR
15 October 2007



CHARLES N. APPIAH
SUPERVISORY PATENT EXAMINER